

### **REMARKS**

Claims 1-2, 6-7, 11, 14, 26 and 28 have been amended, Claims 53-58 have been added, and Claims 8, 20-25 and 33-52 have been canceled. In view of the foregoing amendments, and the remarks that follow, favorable consideration is respectfully requested.

#### **Restriction Requirement**

The Office Action sets forth a restriction requirement as between the original apparatus claims (Group I) and the original method claims (Group II).

In light of the foregoing amendments, all of the independent claims now recite a valve, or variable constriction, that is disposed in one of first and second conduits, and arranged to respectively control a first or second flow rate. For at least this reason, it is believed that all of the pending claims now have a common and unifying feature. Accordingly, it is believed that, in light of the foregoing amendments, all of the currently pending claims can be examined together on the merits.

The PTO requires that Applicants reply to a restriction requirement, even where Applicants believe the restriction to be invalid or unnecessary. Accordingly, as between the apparatus claims (Group I) and the method claims (Group II), Applicants elect the currently pending apparatus claims, which are Claims 1-7, 9-10, 53-54 and 57.

#### **Election-Of-Species Requirement**

The Office Action also sets forth an election-of-species requirement, indicating that if Applicants respond to the restriction requirement by electing the method claims, then Applicants must elect between three species, which are identified as:

Species A = original Claims 11-19.

Species B = original Claims 20-25 and 50-52.

Species C = original Claims 44-49.

First, it is noted that the election-of-species requirement is improper and invalid, because the Examiner has failed to identify any actual species. More specifically, the Examiner has attempted to define species by referring only to claims, but MPEP §806.04(e) emphasizes with italics that:

Claims are definitions or descriptions of inventions. *Claims themselves are never species . . . Species always refer to the different embodiments of the invention.*  
(Emphasis in original).

Because the Examiner has identified claims rather than embodiments, the Office Action fails to properly identify any actual species.

In any event, as discussed above, Applicants have elected the apparatus claims rather than the method claims, and so the election-of-species requirement for the method claims is moot.

### Conclusion

In view of the foregoing, further and favorable consideration of this application is respectfully requested. If the Examiner believes that examination of the present application may be advanced in any way by a telephone conference, the Examiner is invited to telephone the undersigned attorney at 972-739-8647.

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Reply to Office Action of March 12, 2009

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Although Applicants believe that no additional fees are due, the Commissioner is hereby authorized to charge any fees required by this paper, or to credit any overpayment, to Deposit Account No. 08-1394 of Haynes and Boone, LLP.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "T. Murray Smith", written over a horizontal line.

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Enclosures: Third Information Disclosure Statement, with Form PTO-1449  
and a copy of each listed "Foreign" document

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